

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

<b>In the Matter of</b>	)	<b>Potential Omnibus rule makings</b>
	)	<b>NPRM 16-239</b>
<b>Amendment of Part 97 of the Commission's</b>	)	<b>RM-11708</b>
<b>Amateur Radio Service Rules to Permit Greater</b>	)	<b>RM-11759</b>
<b>Flexibility in Data Communications</b>	)	<b>RM-11831</b>
	)	<b>RM-11828</b>
	)	<b>September 19, 2019</b>

**To: The Chief, Wireless Telecommunications Bureau**  
**Via: Office of the Secretary**

**OPPOSITION REPLY COMMENT TO ARRL/SIDDALL EX PARTE 9/17/19**

Janis Carson, AB2RA, Ron Kolarik, K0IDT, Dan White, W5DNT, long term ARRL members, Extra class licensees, pursuant to Section 1.405 of the Commission's Rules (47 C.F.R. §1.405), hereby respectfully request consideration of this Ex Parte notice and reply comments to 9/17/19 ARRL Ex Parte, via their representative, Dave Siddall FCC ID: 1091828798020.

[https://ecfsapi.fcc.gov/file/1091828798020/ARRL%20FCC%20Docket%2016-239%2009\\_17\\_2019.pdf](https://ecfsapi.fcc.gov/file/1091828798020/ARRL%20FCC%20Docket%2016-239%2009_17_2019.pdf)

1. We wish to point out that **WE ALL were present at the ARRL meeting to negotiate an agreement regarding 16-239**, referenced by Dave Siddall in his Final Report: [https://ecfsapi.fcc.gov/file/107150047500607/ARRL%20FCC%2016-239%20Final%20Report%2007\\_15\\_2019.pdf](https://ecfsapi.fcc.gov/file/107150047500607/ARRL%20FCC%2016-239%20Final%20Report%2007_15_2019.pdf) “This negotiating meeting included: Ari Fitzgerald and John Castle, representing New York University/Ted Rappaport, N9NB; Loring Kutchins, W3QA; Ron Kolarik, K0IDT; Tom Lafleur, KA6IQA; Janis Carson, AB2RA; Ross Merlin, WA2WDT; Dan White, W5DNT and Mike Marcus, N3JMM.”

2. Contentious FCC rule making proceedings about this topic going back to 2007 (RM-11306) finally near conclusion. **NPRM 16-239 exposes the most important critical flaw that existed in all previous proposals: automatic (ACDS) and peer to peer human attended operations are**

**fundamentally incompatible, and need separate spectrum in which to operate.** These problems have been known for some time, as seen in this RM-11708 filing by Terry Gerdes, AB5K, who was instrumental in motivating us to take action: <https://ecfsapi.fcc.gov/file/7521098786.pdf>

NPRM 16-239 was intensely discussed even within the recent ARRL BOD meeting. It is worth noting that ARRL's decision was not unanimous. Director Norton voted no against 14 AYES. To assert that it is a good idea to abolish all band segments (for mode and/or license class) within the HF spectrum does not seem to fall within the prevalent opinions of the amateurs the ARRL BOD is supposed to represent. This director's out of step positions date from 2015, near the beginning of these FCC proceedings. See page 8 item 32, discussion after paragraph 4 and page 12 item 40.

[http://www.arrl.org/files/file/About%20ARRL/Board%20Meetings/2015\\_July\\_ARRL\\_Board\\_Minutes.pdf](http://www.arrl.org/files/file/About%20ARRL/Board%20Meetings/2015_July_ARRL_Board_Minutes.pdf)

**We thank the other 14 directors for courageously being a voice of reason, to resolve 16-239.**

3. We therefore support the ARRL Board of Directors decision, as far as it goes, as the only possible way out of the current RM-11708 and 16-239 dilemma. It followed the very specific instructions the FCC issued, which define the scope of comments to simple choices:

**FCC FILING INSTRUCTIONS IN NPRM 16-239:**

“12. While we tentatively conclude that a specific bandwidth limitation for RTTY and data emissions in the MF/HF bands is not necessary, we nonetheless request comment on whether we should establish emission bandwidth standards for amateur service MF/HF RTTY and data emissions. Commenters favoring such action should address what the maximum bandwidth should be, the basis for the particular limitation the commenter proposes, and **whether the limit should apply across the bands or only in particular subbands.** Commenters should explain the grounds for departing from the generally applicable standards.”

**IT IS ACCORDINGLY RESOLVED:**

- (1) All automatically controlled digital stations (ACDS) below 30 MHz, regardless of bandwidth, are authorized to operate only within the ACDS bands designated in the FCC's Rules, 47 C.F.R. §97.221(b);**
- (2) All digital mode stations that operate with a bandwidth greater than 500 Hz also must operate within the ACDS bands designated in the FCC's Rules, whether or not automatically controlled;**
- (3) No digital mode station may employ a bandwidth greater than 2.8 kHz in any band below 29 MHz;**

However, the 9/17/19 Ex Parte appears to deviate from the decision of the ARRL Board of Directors by continuing the position of the original petition that caused RM-11708 as originally submitted, without any changes: wide band emissions permitted EVERYWHERE in the RTTY/DATA/CW HF segments. How can the ARRL filing claim to represent its own BOD and the 20% of US amateurs who are members with this contradiction? The FCC should consider this question when weighing ARRL's 9/17/19 filing. (See Appendix 1)

4. By separating human control operator attended operations from automatic digital operations in the HF bands, it “mitigates” the interference and “assigned channels” problems inherent with commingling ACDS operations as currently conducted. Further, by setting a practical band width limit (2.8 KHz) within the ACDS segment that prevents one signal from “usurping” the entire segment, the ARRL BOD decision “mitigates” that problem. Those developing wide band emissions appropriate for high speed data transfer also will be gathered within the ACDS segment as well. Narrow band peer to peer emissions such as the innovative FT8 as well as RTTY and other digital modes and CW should be protected from wide band channelized HF email systems, by also limiting emissions in the RTTY/DATA sub band to a maximum of 500 Hz outside the ACDS segment. The ARRL BOD decision conforms to the FCC instructions: “Commenters should explain the grounds for departing from the generally applicable standards.” The ARRL BOD decision works, because it conforms to IARU “applicable standards” in international band plans. The ARRL 9/17/19 Ex Parte departs from the “generally applicable standards” because it allows 2.8 KHz data EVERYWHERE in the HF DATA segments, rather than “only in particular sub bands.”

**5. PROCEDURAL NOTE:** If the FCC creates a band width limit (2.8 KHz) *inside* the ACDS segment as ARRL requested, there is legitimate justification to impose a similar band width specification (500Hz) *outside* the ACDS segment, in the RTTY/DATA segment.

**6. FACTUAL NOTES:** NPRM 16-239 has NO impact on the VOICE/IMAGE band segments, or the modes employed there. VOICE is not “within the scope” of a rule making pertaining to RTTY/DATA band segments. Further, there are scores of FCC comments that advocate segregation of ACDS, in harmony with the actual ARRL BOD decision, yet contrary to the 9/17/19 ARRL filing which asserts widespread support for the current Ex Parte filing of 2.8 KHz EVERYWHERE.

**7. VERY IMPORTANT OPPOSITION NOTE:** The ARRL 9/17/19 Ex Parte places all the above considerations on their page 6, (page 11 of the actual Ex Parte) in a section titled: “III. Matters Raised by Commenters Outside the Scope of This Proceeding May Have Merit for Consideration in a Further Notice”. It once again dismisses valid relevant concerns about spectrum planning which most certainly ARE within the scope of the FCC instructions noted above. “While these issues are outside the scope of this proceeding, the League believes that some of the underlying rules should be clarified and that other issues have merit and should be considered in a Further Notice or new proceeding.” This is yet another desperate attempt to salvage this badly conceived petition, after admitting in that section vital elements of spectrum management: “have merit and should be considered”. This ARRL admission demonstrates the defective nature of their RM-11708 petition: ARRL should have done the spectrum planning FIRST, not as a patch after the fact. Planning of the ACDS sub bands size and location MUST BE INSEPARABLE from the elimination of the 300 baud limit and institution of their 2.8 KHz limit. Otherwise, wide band emissions will be legal EVERYWHERE in the RTTY/DATA/CW segments of all HF bands, creating a situation WORSE than what currently exists!

**8. ANOTHER IMPORTANT PROCEDURAL NOTE:** The ARRL Ex Parte of 9/17/19 is beyond the FINAL extension granted by the FCC, and is therefore **NOT TIMELY FILED**. Moreover, they are at this late date requesting the FCC consider separately these essential spectrum management

elements in yet another extension for “Further Notice” (FNPRM) or a separate “new proceeding”.

**9. THE FCC HAS A SIMPLE SOLUTION:** IMMEDIATELY Reject RM-11708 and 16-239 in a Report and Order as fatally flawed, and direct the ARRL to submit a NEW petition to give them a “new proceeding” to work out the critical details they ignored in the first petition. Once their Ad Hoc committee generates a suitable plan, hopefully peer reviewed by ARRL membership at large, they can submit it again, to obtain a new rule making proceeding which INCLUDES the HF band plans.

**10. COST VS BENEFITS ANALYSIS:** In 16-239 instructions, the FCC directs commenters to provide costs and benefits analysis based on adoption of NPRM 16-239. The presumed benefit of adoption is faster data, allegedly for emergency communications. Much of the traffic flowing is NOT by any stretch of logic emergency communications, but benefits a vocal minority of approximately 15,000 yacht owners seeking to avoid payment for commercial equivalents. See referenced filings in the appendix. These users could easily pay for their email service and not be governed by any Part 97 rules, ending their disputes about inappropriate content or monitoring of their emails. The cost of NOT implementing NPRM 16-239 is the temporary delay in raising speeds from Pactor 3 to Pactor 4 rates. The ARRL can easily reduce this delay by preparing a proper petition, as they should have done in the first place. Multiple STAs have been used by them to address legitimate emergency situations. The cost of hastily allowing wide band emissions in the ENTIRE RTTY/DATA sub bands is permanent damage to the amateur service and impaired access to that spectrum by 750,000 US licensed users, and even more international incumbent users. **Please reject the ARRL 9/17/19 16-239 filing.**

**11. PROCEDURAL NOTE ON RM-11759:** RM-11759 is a component of the required “right sizing” of the ACDS segments, and alignment with IARU band plans, which ARRL has failed to do. If the ARRL decides to petition for another version of RM-11708 and NPRM 16-239, 80 meters should be part of the overall HF band planning process. It is not desirable to do this as a piecemeal process of badly coordinated rule makings. Traditionally, the FCC has issued Omnibus Report and Orders. It should do so in this instance, to obtain a comprehensive solution. **Please reject RM-11759.**

## CONCLUSION

We wish to thank the FCC for ensuring contact with the FCC proceeded according to proper rule making procedures, rather than allowing special interests a “back door” access without filing proper Ex Parte Notices.

**In closing, we urge the FCC to REJECT the September 17, 2019 ARRL proposal and conclude 16-239 with a Final Report and Order dismissing the entire Rule Making as fatally flawed, by their own admission important issues “have merit and should be considered”.** The ARRL has MISSED ITS DEADLINE, and HAS NOT CHANGED ANYTHING FROM THEIR ORIGINAL PETITION TO IMPROVE IT. There is nothing to gain by extending this proceeding further. Please end this now by rejecting 16-239 in its entirety. The ARRL should start over.

Also please **use RM-11831**, to resolve important issues arising from NPRM 16-239.

In addition, there are long delayed multiple open amateur radio rule makings which need to be acted on in a timely fashion, in an FCC **Omnibus Report and Order**: **REJECT**: RM-11759, RM-11829, RM-11828, RM-11826 **APPROVE**: RM-11785, RM-11767. **ADOPT, REJECT, OR DECLARE DORMANT**: RM-11834, RM-11835, RM-11775.

Respectfully submitted, /S/  
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### **EMAIL DISTRIBUTION:**

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Please incorporate by reference the following filings:

ENFORCEMENT BUREAU TICKET # 3184322

<https://ecfsapi.fcc.gov/file/11091541913133/FCC%20WT%2016-239%20ARRL%20reply.pdf>

<https://ecfsapi.fcc.gov/file/1071958608259/July%2018%2C%202019%20Ex%20Parte%20Filing.pdf>

<https://ecfsapi.fcc.gov/file/10513284335700/RobertStephensARRLreply.pdf>

<https://ecfsapi.fcc.gov/file/10502200072815/REPLY%20ARRL%2011828%20a.pdf>

<https://ecfsapi.fcc.gov/file/10330103611071/RM-11831%20FINAL%201.pdf>

<https://ecfsapi.fcc.gov/file/1020199526416/FINAL%20REPLY%202019%20%2016-239.pdf>

[https://ecfsapi.fcc.gov/file/1219623911650/SSCA%2012\\_18%20REPLY%20Final.pdf](https://ecfsapi.fcc.gov/file/1219623911650/SSCA%2012_18%20REPLY%20Final.pdf)

[https://ecfsapi.fcc.gov/file/1219623911650/DRAFT%20REPLY%20ARSFI%2012\\_18%20%2016-239.pdf](https://ecfsapi.fcc.gov/file/1219623911650/DRAFT%20REPLY%20ARSFI%2012_18%20%2016-239.pdf)

<https://ecfsapi.fcc.gov/file/1219623911650/COVER%20LETTER%20ARSFI%20ex%20parte2.pdf>

<https://ecfsapi.fcc.gov/file/1116853100153/petition2%20%20to%20dismiss%2016-239.pdf>

[https://ecfsapi.fcc.gov/file/111469432723/WT%2016\\_239replySCS%20ERRATA.pdf](https://ecfsapi.fcc.gov/file/111469432723/WT%2016_239replySCS%20ERRATA.pdf)

<https://ecfsapi.fcc.gov/file/1022189744573/FINAL%20PSHSB%2017-344.pdf>

<https://ecfsapi.fcc.gov/file/10100754910405/MATTHEW%20PITTS%20REBUTTAL1.pdf>

FCC DA 13-1918 ¶ 6, and FCC 94-76A1-pdf (PR Docket No. 93-85)

### **APPENDIX 1: ARRL BOD MINUTES JULY 19-20, 2019**

How is it possible that this 9/17/19 ARRL Ex Parte fulfills directives (1), (2), and (3) below?

Can the 9/17/19 ARRL filing then be anything that represents the entire body of US amateurs, or even ARRL's own Board of Directors?

Page 17: <http://www.arrl.org/files/file/2019%20Board%20of%20Directors/Final%20Minutes%20July%202019.pdf>

“IT IS ACCORDINGLY RESOLVED that the ARRL’s Washington Counsel is instructed to take appropriate steps, including, but not limited to, appropriate filings with the Federal Communications Commission, to obtain the Commission’s approval for the following enumerated changes to Part 97 of the Commission’s Rules:

- (1) All automatically controlled digital stations (ACDS) below 30 MHz, regardless of bandwidth, are authorized to operate only within the ACDS bands designated in the FCC’s Rules, 47 C.F.R. §97.221(b);**
- (2) All digital mode stations that operate with a bandwidth greater than 500 Hz also must operate within the ACDS bands designated in the FCC’s Rules, whether or not automatically controlled;**
- (3) No digital mode station may employ a bandwidth greater than 2.8 kHz in any band below 29 MHz;**
- (4) Reiterate to the Commission the need to remove, and the benefits of removing, the current baud limitations, subject to the conditions requested by the ARRL herein;
- (5) Reiterate to the Commission the ARRL’s unchanged position — most recently stated in its Comments submitted In the Matter of Don Rolph, RM-11699 - that the encryption of messages prohibited in Amateur communications by Section 97.113 of the Commission’s Rules and by Article 25, §2 of the International Radio Regulations, should remain prohibited;
- (6) Request that the Commission remind Amateurs, by whatever appropriate means available, of the current prohibition against transmitting “messages encoded for the purpose of obscuring their meaning.””